RE CHENG SENG FATT

[R.Cr.J. (Gill J.) May 27, 1964]

[K.L. — Criminal Revision No. 10 of 1964]

Criminal Procedure — Sentence in case of conviction for several offences at one trial — Courts Ordinance, 1948, s. 102.

The effect of section 102 of the Courts Ordinance, 1948, is that where a person upon conviction at one trial of two or more distinct offences is sentenced to a term of imprisonment for each offence, the court has discretion to order the sentences to run concurrently or consecutively. But if the sentence for any one offence is a fine, then the sentence in default of payment of such fine must be consecutive to any other term or terms of imprisonment.

CRIMINAL REVISION.

Salleh Abbas (Deputy Public Prosecutor) for the Public Prosecutor.

Accused in person.

Gill J.: This case has been brought up for purposes of revision at the instance of the Public Prosecutor. The accused was charged in the Magistrate's Court, Kuala Lumpur as follows:—

(1) That you on 13.12.63 at Pudu Police Station, in the District of Kuala Lumpur, in the State of Selangor, being Police supervisee No. 3521, did fail to comply with the provision of section 296(ii) of the Criminal Procedure Code, to wit, by failing to report yourself on 13.12.63 at Pudu Police Station, within the Kuala Lumpur Police District and that you have thereby committed an offence punishable under section 297 of the Criminal Procedure Code.

(2) That you on 18.12.63 at about 1.30 a.m. at Pudu Railway Station, in the District of Kuala Lumpur, in the State of Selangor, were found trespassing upon the railway property, to wit, by sleeping in the said railway station, and that you have thereby committed an offence under section 106 of the Railway Ordinance.

He pleaded guilty to both charges whereupon he was convicted and sentenced to undergo one year's imprisonment on the first charge and fined $10 in default one week's imprisonment on the second charge, the sentences to run concurrently.

In making the order for the sentences to run concurrently the learned Magistrate overlooked the provisions of section 102 of the Courts Ordinance, 1948. This section provides that "when a person is convicted at one trial of any two or more distinct offences the court may sentence him for such offences to the several punishments prescribed therefor which such court is competent to inflict, such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, or to run concurrently if the court shall so direct". There is, however, an important proviso to that provision, namely, proviso (c), which says that "when imprisonment is directed in default of payment of a fine or of costs or compensation ordered under the authority of any law for the time being in force, such imprisonment shall be consecutive to any other term or terms of imprisonment so directed and to any sentence of imprisonment otherwise imposed."

The effect of section 102 of the Courts Ordinance is that where a person upon conviction at one trial of two or more district offences is sentenced to a term of imprisonment for each offence, the court has discretion to order the sentences to run concurrently or consecutively. But if the sentence for any one offence is a fine, then the sentence in default of payment of such fine must be consecutive to any other term or terms of imprisonment.

In the present case if the sentence imposed for each offence was a term of imprisonment, the order for the sentences to run concurrently would have been a perfectly valid and legal order. But as one of the sentences was a fine the order for the sentence in default of payment of such fine to run concurrently was contrary to the provisions of section 102 of the Courts Ordinance. The order for the sentences to run concurrently is therefore set aside and I make an order that the sentences do run consecutively.

Order accordingly.

LIM TAI TIN v. SERVICES LTD.

[F.C. (Thomson L.P., Tan Ah Tah F.J. and Chua J.) September 14, 1964]

[Singapore — Federal Court Civil Appeal No. 60 of 1963]

Landlord and Tenant — Standard rent — Premises "let separately" — Control of Rent Ordinance (Cap. 242), ss. 2, 3, 22 and 23 — Interpretation of Ordinance.

In this case the respondents claimed possession of premises No. 937 Serangoon Road which was let to the appellant. The premises together with Nos. 933 and 939 Serangoon Road were originally let together at the rent of $110 a month. Subsequently the then tenant agreed to give up possession of the lands and houses occupied by him and became tenant of 937 Serangoon Road only at the rent of $175 a month. The appellant subsequently took over the tenancy of 937 Serangoon Road. The respondents brought an action to claim possession of No. 937 Serangoon Road, as rent was in arrears and judgment was given for them. The appellant appealed. It was argued on appeal that the standard rent of No. 937 Serangoon Road was not $175 but some proportion of $110 which was the rent paid for the whole of the premises including No. 937 Serangoon Road.

Held: No. 937 Serangoon Road was first let separately at the agreed rent of $175 a month and that was accordingly the standard rent for the purposes of the Ordinance; and the appeal must therefore be dismissed.

Per Thomson L.P.: "The whole Ordinance deals with 'premises', an expression which it defines, and it regulates the rent of premises. Clearly it cannot apply to any subject of a tenancy agreement that does not fall within its own definition of premises. And by that definition 'premises' means (not 'includes') a building and so forth and any part of such building 'let or sublet separately'.

In the ordinary usage of the English language that clearly means let separately from any other building and does not mean let as a part of a number of buildings let together under a single contract of letting. The word 'separately' governs the words 'let or sublet'; it is the letting and not the building that must be separate. No doubt such a number of buildings within the scope of a single contract of letting would themselves be 'premises' within the meaning of the Ordinance but they would be different premises from each one of them let separately."

Cases referred to:—

(1) *Lian Teck Chew* v. *Kiew Leng & Co.* [1952] M.L.J. 135.

(2) *Tan Ah Seah* v. *Teo Kai Min & Others* [1954] M.L.J. 50.

(3) *Harwood and another* v. *Perreau* [1955] M.L.J. 56.

(4) *Hin Seng & Co.* v. *Seac Co.* [1963] M.L.J. 109.

(5) *Capital and Provincial Property Trust Ltd.* v. *Rosie* [1951] 2 All E.R. 600.

FEDERAL COURT.

L. A. J. Smith for the appellant.

Dennis Lee Kim Yew for the respondents.

Cur. Adv. Vult.

Thomson L.P.: This appeal raises a question as to the interpretation of the Singapore Control of Rent Ordinance (Cap. 242) ("the Ordinance").

The respondent company who were the original plaintiffs, and whom I shall call "the landlord", are the freehold owners of a piece of land, Lot 324 Mukim XVII, Singapore, which they purchased in March, 1947. At that time there were three buildings on the land known as Nos: 933, 937 and 939 Serangoon Road. All these buildings were occupied by one Ismail Kassim Mansoor (who is said to be now dead) at a rent of $110 a month which he had been paying to the previous owner and which he continued to pay to the new landlord.

In December, 1947, the landlord took proceedings against Mansoor for the possession of the whole of Lot 324 which were settled. In accordance with the terms of settlement Mansoor surrendered his tenancy of the whole of Lot 324 and became tenant of No: 937 Serangoon Road only, which was a shed used as an oil factory, at a rent of $175 a month. Then, in March, 1949, Mansoor ceased to be the tenant and the present appellant became tenant at the same rent, that is $175 a month, and in July, 1949, he became tenant, on a separate letting, of an adjoining piece of land at a rent of $15 a month.

On 1st Januàry, 1954, the rent of No: 937 was increased by 10% to $192.50 a month and the rent of the adjoining piece of land was increased to $16.50 a month. These rents were paid until the end of 1957 but the appellant then fell into arrears and in 1959 the landlord commenced distress proceedings. These were withdrawn on the appellant agreeing to pay five month's rent at once and the balance by instalments. The five months' rent was paid but no further payments of any sort were made although as from 1st January, 1960, the landlord agreed to reduce the rent of No: 937 to $133.50 a month which with the rent of $16.50 in respect of the adjoining piece of land made a total of $150 a month.

In the event the landlord terminated the appellant's contractual tenancies both of No: 937 and of the separate piece of land by notice to quit as at 28th February, 1961. On the assumption that rents at the contractual rates agreed by the parties were lawful the amount then due by the appellant to the landlord was $3,409, being rent for 22 months.

To these facts, which I think are now common ground, it is only necessary to add that there has not been at any time any application to the rent conciliation board to fix the rent.

On 22nd July, 1961, the present proceedings were commenced in which the landlord claimed possession of No: 937 (but not, curiously, the adjoining piece of land), $3,409 arrears of rent and *mesne* profits.

The defence was that No: 937 was subject to the provisions of the Control of Rent Ordinance, that the maximum recoverable rent under the Ordinance was the "standard rent" as defined by the Ordinance, that this was $60 a month and not the stipulated contractual rents, and that on this basis far from there being any rent in arrears at 28th February, 1961, a very considerable sum had been overpaid. In the circumstances the landlord was not entitled to possession but on the other hand a considerable amount of rent was recoverable by the appellant under section 3 of the Ordinance and for this there was a counter-claim, the amount of which was laid at $17,088. It is conceded that on any showing this figure is wrong as it includes rent paid for the separate piece of land and covers a period of about 12 years prior to the date of the writ. The point, however, is without importance.

In the event Buttrose J. gave judgment for the landlord on the claim and on the counter-claim and against that decision the appellant has now appealed.

At the trial the only question that was really in issue was whether the standard rent of No: 937 under the Control of Rent Ordinance was $175 a month or $60 a month. The landlord claimed that it was $175 a month and he based this on the history of the matter as it has been related, that is that No: 937 was first let as a separate building in December, 1949,

when it was let to Mansoor and the rent was then $175 a month. The appellant said that the standard rent was $60 a month and he based that on an allegation that for a time during the Japanese occupation it was let (or sub-let) separately to him at a rent of $60 a month. The only evidence in support of this allegation was that of the appellant himself which was very confused. In particular he was by no means clear as to just what he claimed to have occupied, whether it was the whole or a part of the building or whether it included a part of the surrounding land. Not surprisingly, the trial judge declined to accept his evidence on the point.

Before us the appellant's argument has been somewhat different. It has been to the effect that the correct standard rent was not $175 but was some proportion of $110 which was the rent which was being paid for the whole of the premises comprised in Lot 324 when it was acquired by the landlord in 1947, that being the earliest rent of which there was any reliable evidence.

To appreciate the question involved it will be necessary to travel again some part of the dreary journey through the wilderness of the local legislation relating to control of rent. I think, however, we may spare ourselves the portion of that journey which traverses the legislation prior to the present Ordinance (Cap. 242), which came into force on 20th July, 1953, beyond observing that throughout the object of the legislation clearly has been and is to restrict the rents of the property to which it applies to their 1939 level subject to certain modest increases.

The Singapore Control of Rent Ordinance, unlike the United Kingdom Acts, is not restricted in its application to dwelling-houses. It applies to all what it calls "premises", which are thus defined (section 2):—

> "'premises' means any dwelling house,....and any other building....in which persons are employed or work and any part of any such building let or sublet separately ...."

The Ordinance sets up a rent conciliation board with extremely wide powers of fixing the rents of premises to which the Ordinance applies. Then section 3, which is the actual effective provision of the Ordinance, provides that it shall be unlawful for a landlord of premises to receive or recover a rent in respect of any tenancy of premises "in excess of the rent fixed by an order of the board, or, if no order has been made, in excess of the standard rent".

In the present case there has been no order of the board. The question therefore is, what is the "standard rent" of No: 937 Serangoon Road?

"Standard rent" is thus defined (section 2):—

> "'standard rent' means—
>
> (a) if the rent has been fixed by the Board prior to the commencement of this Ordinance, the rent so fixed;
>
> (b) if the rent has not been fixed by the Board prior to the commencement of this Ordinance, the rent of the premises as at the 1st day of August, 1939; or in the case of premises which were then unlet, unoccupied or unbuilt, the rent at which the premises were first let after the 1st day of August, 1939;"

Here, the rent had not been fixed by the board prior to the commencement of the Ordinance. To arrive at the standard rent it is, therefore, necessary to consider whether at 1st August, 1939, the premises were unlet and if so when and at what rent they were first let after that date. The question here is, are the words "unlet" and "let" in paragraph (b) of the definition of "standard rent" to be read in their literal sense? Or are they to be read in the light of the definition of "premises" as meaning "unlet" (or "let") as the subject matter of a separate contract of tenancy relating to no other building?

On this question there has been a certain difference of judicial opinion.

In the case of *Lian Teck Chew* v. *Kiew Leng & Co.*[1] Knight J. did not consider the question in terms. He held, however, that where the standard rent of premises had been fixed by the rent board and the premises were subsequently divided and let as separate premises section 2(b) had no application and that the standard rent of each set of premises could be fixed by the board at a "fair and reasonable" rent and that in doing so they would "no doubt keep in mind the standard rent of the premises". In the Federation case of *Tan Ah Seah* v. *Teo Kai Min & Ors.*[2] Spenser Wilkinson J. (as he then was) referred to the definitions of "premises" and "standard rent" in the then Federation Ordinance (which were the same as those in the present Singapore Ordinance) and said:—

> "It appears to me that the wording of the definition of 'standard rent' when read together with the definition of 'premises' makes it clear that the standard rent of a part of a house sub-let may be assessed differently from the standard rent of the whole, because, if there has been no order of the board, the first letting of each part may have occurred at different times and at different rates."

The same view was taken by Sir Charles Murray-Aynsley C.J. in the case of *Harwood & Anor.* v. *Perreau* [3] and by Ambrose J. in the case of *Hin Seng & Co.* v. *SEAC Co.*[4]

With great respect, I would wish to state my own views in my own words.

The whole Ordinance deals with "premises", an expression which it defines, and it regulates

the rent of premises. Clearly it cannot apply to any subject of a tenancy agreement that does not fall within its own definition of premises. And by that definition "premises" means (not "includes") a building and so forth and any part of such building "let or sublet separately". In the ordinary usage of the English language that clearly means let separately from any other building and does not mean let as a part of a number of buildings let together under a single contract of letting. The word "separately" governs the words "let or sublet"; it is the letting and not the building that must be separate. No doubt such a number of buildings within the scope of a single contract of letting would themselves be "premises" within the meaning of the Ordinance but they would be different premises from each one of them let separately.

On the view of the evidence adopted by the trial judge, which I think must be accepted by us, No: 937 Serangoon Road was first let separately when Mansoor became the tenant of it separately from the other buildings on Lot 324 in 1948 and the rent which was then agreed at $175 a month is accordingly the standard rent for the purposes of the Ordinance. In this result I can see nothing that conflicts with the objects of the Ordinance. The rent conciliation board had ample powers to vary that rent which would then have ceased to be the recoverable rent. But those powers were at no time invoked by the present appellant or the tenant before him.

An argument has been addressed to us, based on the case of *Capital and Provincial Property Trust, Ltd.* v. *Rice,*[5] that the standard rent in a case of this nature should be determined by some sort of process of apportionment of the original inclusive rent. To my mind that case is not very much in point by reason of the differences between our legislation and the United Kingdom Acts prior to 1957. The United Kingdom Acts controlled the rent of all dwelling houses to which they applied by providing that in every case rent should not be recoverable in excess of what was called the "standard rent". There were elaborate provisions which varied from time to time and which included a power of apportionment where a dwelling house was divided (see section 5 of the 1938 Act) and the effect of these was that a standard rent could be ascertained in respect of any dwelling house to which the Acts applied. And, of course, if this had not been the case the result would have been that in many cases the object of the Acts would have been frustrated for all control was by reference to the standard rent. In Singapore, however, there can be no question of the statute being frustrated if a standard rent cannot be ascertained in respect of any particular premises for in every case the rent conciliation board has power to fix the rent.

In any event in Singapore the court has no power of apportionment as between a landlord and his tenants.

The only provisions of the Ordinance relating to apportionment of rent are contained in sections 22 and 23. These sections, which were introduced into the local legislation for the first time in 1953, provide (section 22) that when the tenant of premises has sublet any part of such premises the board may apportion the rent as between the tenant and the sub-tenant, and (section 23) where there has been no such apportionment by the board the court may make such an apportionment in any proceedings for the recovery of the premises or any part of them. This is subject to the proviso that the total of the rents so apportioned, including a notional apportionment in respect of the portion occupied by the tenant, shall not exceed 110% of the rent of the whole premises. These provisions, however, have no application to the relationship between a landlord and his tenants and clearly they are designed to deal with the case which was of all too frequent occurrence where a chief tenant who was himself protected as against his landlord sought to exploit that protection by subletting at excessive rents.

I would dismiss the appeal with costs.

Tan Ah Tah F.J. and Chua J. concurred.

Appeal dismissed.

Solicitors: *L. A. J. Smith; Lee & Lee.*

MARUTHAPPAN v. CLAUDE DA SILVA

[F.C. (Thomson L.P., Chua and Winslow JJ.) September 14, 1964]

[Singapore — Federal Court Civil Appeal No. 64 of 1963]

Principal and Agent — Collector of rents — Agent cannot dispute title of Principal.

Landlord and Tenant — Agent appointed to collect rents staying on demised premises rent free — Whether he is tenant or licensee.

The respondent was the mortgagee in possession of the unexpired portion of a 99 years lease of controlled premises. The appellant was the agents appointed by the respondent to collect rents from the various tenants of the premises The respondent commenced proceedings for the recovery of $1,000 being balance of rents collected by the appellant on behalf of the respondent. It was contended for the appellant that he was a tenant of the premises and that the respondent's leasehold interest in the premises had expired on December 31, 1959. The learned trial judge accepted the story of the respondent and gave judgment as claimed. On appeal,

Held: (1) on the facts the learned trial judge was right in holding that the appellant was not the tenant of the premises but the agent of the principal for the collection of rents;